

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**McDONALD'S USA, LLC, A JOINT EMPLOYER,  
et al.**

**and**

**Cases 02-CA-093893 et al.**

**FAST FOOD WORKERS COMMITTEE AND  
SERVICE EMPLOYEES INTERNATIONAL  
UNION, CTW, CLC, et al.**

**ORDER DENYING MOTION TO REOPEN THE RECORD  
AND FOR RECONSIDERATION<sup>1</sup>**

The Charging Parties' Motion to Reopen the Record and for Reconsideration of the Board's Order Remanding reported at 368 NLRB No. 134 (2019) is denied.<sup>2</sup> The Charging Parties have not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(c)(1) of the Board's Rules and Regulations.<sup>3</sup> Nor have the Charging Parties identified any basis, under that

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<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Chairman Ring took no part in the consideration of this motion or the underlying Order Remanding.

<sup>2</sup> The General Counsel and McDonald's USA, LLC filed oppositions to the Charging Parties' motion, and the Charging Parties filed reply briefs. Chicago Franchisees V. Oviedo, Inc.; K Mark Enterprises, LLC; Karavites Restaurants 11102, LLC; Karavites Restaurants 26, Inc.; Karavites Restaurant 5895, Inc; Taylor & Malone Management; Seven McD, Inc.; Karavites Restaurant 6676, Inc.; and Topaz Management filed a brief in support of McDonald's USA, LLC's opposition, as did New York Franchisees AJD, Inc.; Lewis Foods of 42nd Street, LLC; 18884 Food Corporation; 14 East 47th Street, LLC; John C Food Corp.; 1531 Fulton St., LLC; McConner Street Holding LLC's store located at 2142 Third Avenue; McConner Street Holding LLC's store located at 2049 Broadway; Mic-Eastchester, LLC's store located at 341 Fifth Avenue; and Bruce C. Limited Partnership's store located at 4259 Broadway.

<sup>3</sup> The Charging Parties argue, among other things, that Chairman Ring and Member Emanuel should have been recused from this case based on their prior affiliation with the law firms of Morgan Lewis and Littler Mendelson, respectively. However, we have

same section, why the record should be reopened.<sup>4</sup> The Charging Parties' request for a stay of the Board's Order Remanding is denied as moot.

Dated, Washington, D.C., September 16, 2020.

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

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Lauren McFerran, Member

(SEAL)

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previously addressed the Charging Parties' arguments in this regard. *McDonald's USA, LLC*, 368 NLRB No. 134, slip op. at 1 fn. 2.

Member McFerran adheres to the views expressed in her dissent from the Board's Order Remanding. Nevertheless, she concurs in the denial of the present motion solely because the Charging Parties have not established grounds for reconsideration under Sec. 102.48(c)(1) of the Board's Rules.

<sup>4</sup> The Charging Parties assert that the record should be reopened so that they can present additional evidence in support of their Motion to Recuse Member Emanuel. The evidence the Charging Parties seek to adduce is an apparently leaked internal Agency document from February 9, 2018. Even if the document were authenticated and admissible, the Charging Parties have failed to explain why that document, "if adduced and credited . . . would require a different result," as required under Sec. 102.48(c)(1) of the Board's Rules and Regulations. The proffered document is not from the Agency's Designated Agency Ethics Official (DAEO) and contains no evident input from the DAEO or Member Emanuel. It is also devoid of any discussion of the Charging Parties' recusal motion or federal ethics requirements. The Order Remanding, not the proffered document (which predates the Order Remanding by 21 months), provides Member Emanuel's rationale for his determination, in consultation with the DAEO, that it was unnecessary for him to recuse himself in this matter. *McDonald's USA, LLC*, 368 NLRB No. 134, slip op. at 1 fn. 2. Accordingly, the Charging Parties have not established a basis for reopening the record.

The General Counsel has requested that we strike from the record the evidence the Charging Parties seek to adduce and all references to it. We deny the request as the evidence does not affect our disposition of the Charging Parties' motion.